

1  
2  
3  
4  
5  
6  
7

8 UNITED STATES DISTRICT COURT  
9 Northern District of California  
10 San Francisco Division

11 UNITED STATES OF AMERICA No. C 14-02063 LB  
12 v. Plaintiff, ORDER GRANTING UNITED  
13 \$23,540 IN UNITED STATES CURRENCY, STATES OF AMERICA'S MOTION  
14 Defendant. FOR DEFAULT JUDGMENT  
15 \_\_\_\_\_ / [ECF No. 15]

16 INTRODUCTION

17 This is a judicial forfeiture action brought under 21 U.S.C. § 881(a)(6) involving the seizure of  
18 Defendant \$23,540 in United States currency. The clerk entered default, ECF No. 14, and the  
19 United States now brings a Motion for Default Judgment (“Motion”), ECF No. 15.<sup>1</sup> A hearing on  
20 the Motion was held on September 18, 2014. For the reasons stated below, and good cause  
21 appearing, the motion is GRANTED.<sup>2</sup>

---

23 <sup>1</sup> Citations are to the Electronic Case File (“ECF”) with pin cites to the electronically-  
24 generated page numbers at the top of the document.

25 <sup>2</sup> The United States has consented to the jurisdiction of a magistrate judge pursuant to 28  
26 U.S.C. § 686(c). See ECF No. 9. No other party appeared. In an *in rem* forfeiture proceeding, a  
27 party that fails to comply with the applicable filing requirements is precluded from standing as a  
28 “party” to the action, making it unnecessary to obtain the individual’s consent to proceed before a  
magistrate judge. *United States v. 5145 N. Golden State Blvd.*, 135 F.3d 1312, 1317 (9th Cir. 1998).  
Therefore, the undersigned magistrate judge may enter judgment in this case.

**STATEMENT****I. FACTUAL ALLEGATIONS**

On November 20, 2013, two United States Postal Inspectors (“PIs”) Jason Chung and Aaron Doo and a DEA Task Force Agent (“TFA”) Britt Elmore at the Post Office’s Oakland Processing and Distribution Center “were engaged in routine parcel interdiction activities” to identify parcels that might contain “controlled substances, the proceeds from trafficking in controlled substances or currency intended to purchase controlled substances.” Complaint, ECF No. 1, ¶ 8. The PIs and TFA identified an Express Mail parcel number EU 924364645 US (“Parcel”), which weighed 7 pounds, 5 ounces; measured 12 inches by 12 inches by 11 inches; and cost \$71.70 to ship. *Id.* The TFA’s narcotics detection canine indicated the presence of controlled substances in the Parcel. *Id.* ¶¶ 11-12.

PI Chung further investigated the Parcel using an on-line law enforcement database called Accurint and learned that the listed sender—Keith Armstrong, 912 Rockefeller Avenue, Tupelo, MS 38801—had an FBI NCIC criminal history report with a misdemeanor arrest for driving with a suspended license in 2010. *Id.* ¶ 13(a). An Accurint query for the address—Lavish Clothing DYII and Lavish Clothing—revealed no history. *Id.* ¶ 13(b). A web search showed no results for either addressee in Oakland. *Id.* A search of the recipient’s address—2029 Damuth Street, Oakland, CA 94602—indicated it was likely a single family home. *Id.* ¶ 13(b). An Accurint query showed that an individual named Mario Evans (DOB 4/9/1978) was associated with the address from August 2012 to November 2014. *Id.* ¶ 13(d). Evans’s FBI NCIC criminal history report showed more than 35 arrests in California between 1994 and 2013. *Id.* Of those, Evans had five drug related arrests and dispositions between 2005 and 2012. *Id.*

After obtaining and executing a search warrant, the PI Chung opened the Parcel and found \$23,540 “concealed inside many layers within a duct taped metal stock pot wrapped in a bubble wrapped white towel.” *Id.* ¶ 14. All but 10 of the 1288 bills were in denominations of \$20 or less. *Id.* The packaging and small denomination bills are both consistent with drug trafficking. *Id.* Based on the totality of the circumstances, PI Chung seized Defendant \$23,540. *Id.* ¶ 15.

An individual named Thaddeus Shaheed filed an administrative claim with the United States

1 Postal Service for Defendant on February 7, 2014. *Id.* ¶ 16. PI Chung searched a government  
2 database named CLEAR and learned that Shaheed was associated with the recipient address in  
3 Oakland from February 2010 to August 2011. *Id.* As of December 10, 2013, the USPS for holding  
4 mail for Shaheed at that address. *Id.*

5 **II. PROCEDURAL HISTORY AND NOTICE**

6 The United States filed this action on May 6, 2014. On May 9, 2014, the United States gave  
7 notice of this action directly to Armstrong, Lavish Clothing DYII, Evans, Shaheed, and four other  
8 parties four other individuals and the recipient's address in Oakland ("Potential Claimants") by  
9 serving a copy of the Complaint for Forfeiture, the Notice of Forfeiture Action, the Warrant of  
10 Arrest of Property *In Rem*, and related documents, via both certified and regular U.S. mail. *See*  
11 Certificate of Service, ECF No. 7; *see also* Motion for Entry of Default, ECF No. 12. The United  
12 States also published notice of this forfeiture action on an official government website  
13 ([www.forfeiture.gov](http://www.forfeiture.gov)) for at least 30 consecutive days, beginning on May 8, 2014. *See* Declaration  
14 of Publication, ECF No. 11.

15 No one filed a verified claim to Defendant \$23,540 or otherwise responded to this action. *See*  
16 Motion, ECF No. 15 at 4; *see generally* Docket. The clerk entered default on August 5, 2014. *See*  
17 ECF No. 14. On August 6, 2014, the government filed its motion for default judgment and noticed it  
18 for September 18, 2014. *See* ECF No. 15. It served the Potential Claimants on August 6, 2014. *See*  
19 ECF No. 16. The court held a hearing on September 18, 2014, and no one appeared to contest the  
20 government's motion.

21 **ANALYSIS**

22 **I. JURISDICTION**

23 The court has jurisdiction over this matter under 28 U.S.C. §§ 1345 and 1355(a), which vests  
24 district courts with original jurisdiction in "any action or proceeding for the . . . enforcement of  
25 any . . . forfeiture . . . incurred under any Act of Congress." *See* 28 U.S.C. § 1355(a).

26 **II. LEGAL STANDARD**

27 **A. Forfeiture**

28 The United States filed this action under 21 U.S.C. § 881(a)(6), which provides, in relevant part,

1 that property “subject to forfeiture” includes “[a]ll moneys . . . intended to be furnished by any  
2 person in exchange for a controlled substance or listed chemical in violation of this subchapter[.]”  
3 21 U.S.C. § 881(a)(6). *See* Complaint, ECF No. 1, at ¶ 1. Forfeiture is “harsh and oppressive” and  
4 thus, is “not favored by the courts.” *See United States v. \$191,910.00 in U.S. Currency*, 16 F.3d  
5 1051, 1069 (9th Cir. 1994). The Ninth Circuit is “particularly wary of civil forfeiture statutes”  
6 because they “impose ‘quasi-criminal’ penalties” but do not provide property owners with the  
7 degree of procedural protections provided to criminal defendants. *See id.* at 1068; *United States v.*  
8 *Marlof*, 173 F.3d 1213, 1217 (9th Cir. 1999) (quoting *\$191,000.00 in U.S. Currency*, 16 F.3d at  
9 1068)). Accordingly, strict adherence to procedural rules is paramount in civil forfeiture  
10 proceedings. *See Marlof*, 173 F.3d at 1217 (denying forfeiture where government “erred” by failing  
11 to provide due notice to property owner); *\$191,910.00 in U.S. Currency*, 16 F.3d at 1068-69 (strictly  
12 construing currency forfeiture provisions of 19 U.S.C. § 615 against government and holding that  
13 “the burden on the government to adhere to procedural rules should be heavier than on claimants”).

14 **B. Default Judgment**

15 Under Federal Rule of Civil Procedure 55(b)(2), a plaintiff may apply to the district court for—  
16 and the court may grant—a default judgment against a defendant who has failed to plead or  
17 otherwise defend an action. *Draper v. Coombs*, 792 F.2d 915, 925 (9th Cir. 1986). The decision to  
18 enter a judgment lies within the court’s discretion. *Pepsico, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d  
19 1172, 1175 (C.D. Cal. 2002). Still, “[a] defendant’s default does not automatically entitle the  
20 plaintiff to a court-ordered judgment.” *Draper* 792 F.2d at 924-25. Default judgments generally are  
21 disfavored because “cases should be decided on their merits whenever reasonably possible.” *Eitel v.*  
22 *McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986). Where the clerk has already entered default, the court  
23 must take as true the factual allegations of the complaint and other competent evidence submitted.  
24 *See Fair Hous. of Marin v. Coombs*, 285 F.3d 899, 906 (9th Cir. 2002); *TeleVideo Sys., Inc. v.*  
25 *Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

26 In deciding whether to enter a default judgment, the court should consider: (1) the possibility of  
27 prejudice to the plaintiff; (2) the merits of plaintiff’s substantive claims; (3) the sufficiency of the  
28 complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute about the

1 material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy  
2 underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel*, 782 F.2d at  
3 1471-72.

4 **III. WHETHER DEFAULT JUDGMENT IS APPROPRIATE**

5 In the present matter, the clerk entered default on August 5, 2014. *See* ECF No. 14.  
6 Consequently, the factual allegations of the Government's complaint are deemed to be true and the  
7 court is vested with the authority to enter default judgment. The decision whether to exercise its  
8 discretion to do so is guided by two overlapping inquiries. First, the court considers the  
9 Government's claims in light of the factors set forth by the Ninth Circuit in *Eitel*, 782 F.2d at 1471-  
10 72. Second, the court determines whether the Government has met the specific procedural  
11 requirements governing forfeiture actions.

12 **A. *Eitel* Factors**

13 The first *Eitel* factor supports granting default judgment because denying the motion would  
14 likely prejudice the United States by leaving it without a remedy. The second and third factors also  
15 support granting default judgment, as the United States' allegations, assumed to be true, show that  
16 the defendant funds are subject to forfeiture under 18 U.S.C. § 881(a)(6), as the funds were related  
17 to drug trafficking. The sum of money at stake (\$23, 540), though substantial, is not so large as to  
18 warrant denial of the motion. As discussed in the procedural history and below, because the  
19 Potential Claimants were properly served with the Complaint, Arrest Warrant, and Notice of  
20 Forfeiture Action, and notice of these proceedings, there is no indication of a possible dispute  
21 concerning material facts or that the default was due to excusable neglect. Finally, although there is  
22 a strong public policy favoring a decision on the merits, no party has filed a verified claim for the  
23 defendant funds, and thus deciding the case on the merits is not possible. Therefore, the  
24 consideration of the *Eitel* factors as a whole weighs in favor of granting the Motion for Default  
25 Judgment.

26 **B. Compliance with Forfeiture Procedures**

27 The Supplemental Rules for Certain Admiralty and Maritime Claims ("Supplemental Rules")  
28 govern judicial forfeitures of property. *United States v. 5145 N. Golden State Blvd.*, 135 F.3d 1312,

1 1315 (9th Cir. 1998). Under the Admiralty and Maritime Local Rule 6-1(a) for the Northern District  
2 of California, “[a] party seeking a default judgment in an action *in rem* must show that due notice of  
3 the action and arrest of the property has been given . . . [t]hrough execution of process in accordance  
4 with Fed. R. Civ. P. Supp. G(3); and . . . in accordance with Fed. R. Civ. P. Supp. G(4).” Admir.  
5 L.R. 6–1(a)(1).

6 ***1. Supplemental Rule G(3)***

7 Supplemental Rule G(3) governs judicial authorization and process. Supplemental Rule G(3)  
8 provides that “the clerk must issue a warrant to arrest the property if it is in the government’s  
9 possession, custody, or control.” Fed. R. Civ. P. Supp. G(3)(b)(i). In this case, a Warrant of Arrest  
10 of Property *In Rem* was issued on April 24, 2013. *See* ECF No. 3.

11 Supplemental Rule G(3) also states that “[t]he warrant and any supplemental process must be  
12 delivered to a person or organization authorized to execute it,” including “someone under contract  
13 with the United States.” The certificate of service states that Carolyn Jusay, a paralegal in the Asset  
14 Forfeiture Unit of the United States Attorney for the Northern District of California, served the  
15 relevant documents in this case via United States certified mail and regular U.S. mail upon the  
16 Potential Claimants’ last known addresseses. *See* Certificate of Service, ECF No. 7. Based on the  
17 foregoing, service was in compliance with Supplemental Rule G(3).

18 ***2. Supplemental Rule G(4)***

19 Supplemental Rule G(4) requires both notice by publication and notice to known potential  
20 claimants. *See* Fed. R. Civ. P. Supp. G(4)(a)-(b). First, with respect to notice by publication, Rule  
21 G(4)(a) provides that “[a] judgment of forfeiture may be entered only if the government has  
22 published notice of the action within a reasonable time after filing the complaint or at a time the  
23 court orders,” and requires that a published notice: “(A) describe the property with reasonable  
24 particularity; (B) state the times under Rule G(5) to file a claim and to answer; and (C) name the  
25 government attorney to be served with the claim and answer.” Fed. R. Civ. P. G(4)(a)(i)-(ii). Rule  
26 G(4) further provides the notice may be published by “posting a notice on an official internet  
27 government forfeiture site for at least 30 consecutive days.” Fed. R. Civ. P. Supp. G(4)(a)(iv).

28 To demonstrate compliance with the published notice requirement, the United States has filed a

1 “Declaration of Publication” that states the United States published notice of the action on an official  
2 government website ([www.forfeiture.gov](http://www.forfeiture.gov)), where it remained for at least 30 consecutive days  
3 beginning May 8, 2014. *See* ECF. No. 11. The published notice described the property to be seized  
4 as “\$23,540 U.S. Currency (14-USP-000775) which was seized from Keith Armstrong on November  
5 26, 2013 at 1675 7<sup>th</sup> Street, located in Oakland, CA.” *Id.* The published notice also noted that  
6 “[a]ny person claiming a legal interest in the Defendant Property must file a verified Claim with the  
7 court within 60 days from the first date of publication (May 8, 2014),” and named Assistant United  
8 States Attorney Patricia Kenney as the government attorney to be served. This notice complies with  
9 the requirements of Supplemental Rule G(4)(a).

10 Next, with respect to notice to known potential claimants, Rule (G)(4)(b) requires the  
11 government to “send notice of the action and a copy of the complaint to any person who reasonably  
12 appears to be a potential claimant.” Fed. R. Civ. P. Supp. G(4)(b)(i). The notice must state “(A) the  
13 date when the notice is sent; (B) a deadline for filing a claim, at least 35 days after the notice is sent;  
14 (C) that an answer or a motion under Rule 12 must be filed no later than 21 days after filing the  
15 claim; and (D) the name of the government attorney to be served with the claim and answer.” *Id.* at  
16 G(4)(b)(ii).

17 The Notice of Forfeiture was served on the Potential Claimants along with the Complaint and  
18 Arrest Warrant. *See* ECF No. 5. The Notice of Forfeiture: (A) is dated May 6, 2014, and was  
19 served on May 9, 2014; (B) states that the deadline for filing a claim is at least thirty-five days after  
20 the notice is sent; (C) states that an answer to the complaint or a motion under Rule 12 of the Federal  
21 Rules of Civil Procedure must be filed within 21 days after filing a claim; and (D) identifies  
22 Assistant United States Attorney Patricia J. Kenney as the government attorney to be served.  
23 Therefore, the United States has demonstrated compliance with the requirements of Supplemental  
24 Rule G(4)(b).

25 Accordingly, notice by publication and notice to known compliance with Supplemental Rule  
26 G(4).

27 **CONCLUSION**

28 For the reasons stated above, the United States’ Motion for Default Judgment is **GRANTED**.

1 This disposes of ECF No. 15.

2 **IT IS SO ORDERED.**

3 Dated: September 18, 2014



---

4  
5 LAUREL BEELER  
6 United States Magistrate Judge  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28